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HOUSE BILL 1947 By
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SENATE BILL 1919
By Cooper J

AN ACT to amend Tennessee Code Annotated, Section 6-51-115(c); Title 57 and Title 67; and to repeal Tennessee Code Annotated, Title 67, Chapter 6, Part 7, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following language as a new, appropriately designated part:

§ 67-4-2201. The title of this part is, and may be cited as, the "Tennessee Employer Privilege Tax Law".

§ 67-4-2202. As used in this part, unless the context clearly requires otherwise:

(1) "Compensation" means all remuneration paid by employers for Tennessee service performed by employees. "Compensation" includes, but is not necessarily limited to, salaries; wages; fees; commissions; bonuses; tips which are paid to the employee while performing services which constitute employment and included in a written statement furnished by the employee to the employer pursuant to § 6053(a) of the internal revenue code; tips allocated by the employer pursuant to § 6053(c)(3) of

the internal revenue code; employee salary reduction contributions to cash or deferred plans pursuant to § 401(k) of the internal revenue code and any employer contributions related to such plans; employee salary reduction contributions to cafeteria plans pursuant to § 125 of the internal revenue code; contributions on behalf of employees to annuity plans; contributions on behalf of employees to profit-sharing or stock bonus plans; fringe benefits provided to and included in gross income of employees for federal income tax purposes; imputed interest on any below-market compensation related loans between employers and employees; the fair market value of any other remuneration paid in any medium other than cash; and any other amounts reported by employers as wages to the Tennessee department of employment security for purposes of the Tennessee employment security law. "Compensation" does not include:

(A) The amount of any payment, with respect to Tennessee service performed by employees, under a plan or system established by the employer which makes provision for its employees generally or for a class or classes of such employees, on account of:

(i) Sickness or accident disability made to an employee or any of such employee's dependents which is awarded under a workers' compensation law. Any third party which makes such a payment on account of sickness

or accident disability to an employee or any of such employee's dependents which is awarded under a workers' compensation law shall be treated for purposes of the Tennessee employer's compensation tax as the employer with respect to such wages, except as otherwise provided in regulations prescribed by the Tennessee department of employment security;

(ii) Medical and hospitalization expenses in connection with sickness or accident disability; or

(iii) Death, provided that the employee does not have the option of receiving or assigning, in lieu of such death benefit, any part of such payment, premium or benefit.

(B) The amount of payment by the employer (without deduction from the remuneration of the employee) of the tax imposed upon an individual in its employ under § 3101 and § 3102 of the internal revenue code; or

(C) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by the employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for the employer.

(2) "Employee" means any person who receives compensation for engaging in any occupation, profession, trade, business or any other type of gainful endeavor for which compensation is paid. "Employee" includes, but is not limited to, any person who receives compensation directly for himself or herself, including any self-employed person; any partner; any person engaging in the practice of any profession, trade, business or occupation; any person engaging in any service-type enterprise; or any person engaging in any other endeavor for which compensation is paid. "Employee" does not include an independent contractor receiving payment from an employer, provided that no employer/employee relationship exists between the employer and the independent contractor.

(3) "Employer" means any person, sole proprietorship, firm, partnership, limited liability company, association, corporation, not-for-profit organization or any other entity, however structured, paying compensation to employees and having an office, location or place of business or otherwise conducting any enterprise or endeavor whatsoever within Tennessee. "Employer" includes, but is not limited to, any self-employed person, any person engaging in any profession, trade, business or occupation, any person engaging in any service-type enterprise or any person engaging in any other endeavor, in his or her individual capacity as his or her own employer. "Employer" does not include the government of the United States or the state of Tennessee.

(4) "Tennessee service" means any of the following:

(A) An employee's entire service, performed within (or both within and without) this state, if the service is localized in this state.

Service shall be deemed to be localized within this state if either:

(i) The service is performed entirely within this state;

or

(ii) The service is performed both within and without this state but the service performed without this state is incidental to the employee's service within the state and, as such, is temporary or transitory in nature or consists of isolated transactions;

(B) An employee's entire service, performed within and without this state, if the service is not localized in any state but some of the service is performed in this state and:

(i) The employee's base of operations is in this state;

or

(ii) If there is no base of operations, then the place from which the service is directed or controlled is in this state; or

(iii) The employee's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state;

(C) An employee's partial service wherever performed within the United States, or Canada, if:

(i) The service is not covered under the unemployment compensation law of any other state or Canada; and

(ii) The place from which the service is directed or controlled is in this state; or

(D) Any other service requiring an employer to pay premiums pursuant to the Tennessee employment security law, Title 50, Chapter 7, Part 4.

§ 67-4-2203. The Tennessee employer privilege tax is a state tax for state purposes only, and no county or municipality or taxing district shall have power to levy any like tax. All taxes collected under this part shall be distributed to the state's general fund.

§ 67-4-2204.

(a) Supervision and collection of the Tennessee employer privilege tax shall be under the direction of the department of revenue, and such department is authorized and empowered to prescribe forms upon which employers shall make reports of such facts and information as will enable the commissioner to ascertain the correctness of the amount reported and paid by such employers.

(b) The commissioner may, within his or her discretion, require any employer to file with its Tennessee employer privilege tax return, a copy of

federal tax forms filed with the internal revenue service for the same tax year.

(c) All employers liable for the Tennessee employer privilege tax shall register with the department of revenue by completing and filing a registration information form prescribed by the department. Such form shall be filed with the department within sixty (60) days following July 1, 2001, or within fifteen (15) days following the date the employer becomes subject to the tax, whichever date occurs last.

§ 67-4-2205. Acting as an employer and paying compensation for Tennessee service rendered by employees are hereby declared to be taxable privileges. The Tennessee employer privilege tax is an accrued tax and is imposed for the exercise of such privileges during the period coinciding with the tax year covered by the return required.

§ 67-4-2206. Every employer shall pay each month to the commissioner of revenue an employer privilege tax, in addition to any and all other taxes, equal to three percent (3%) of the total amount of compensation paid by the employer, during such month, in excess of four thousand one hundred sixty-six dollars (\$4,166). Provided, however, if any employer pays a total amount of compensation of less than fifty thousand dollars (\$50,000) during the tax year, then such employer shall receive a refund of any employer privilege tax paid by such employer during such tax year. Provided further, however, if any employer pays a total amount of compensation in excess of three hundred fifty million dollars (\$350,000,000) during the tax year, then such employer shall not be

required to pay employer privilege tax on such total amount of compensation paid in excess of three hundred fifty million dollars (\$350,000,000).

§ 67-4-2207. The employer privilege tax monthly return shall be filed with the commissioner on or before the fifteenth day of the next succeeding month, and the appropriate tax must be paid to the department at the time of filing such monthly return. If there is a deficiency or delinquency of any monthly return, a penalty in the amount of five percent (5%) for each month of underpayment or part thereof not to exceed a total of twenty-five percent (25%) and interest at the rate prescribed by § 67-1-801 shall be assessed.

§ 67-4-2208. The commissioner of revenue is empowered and it is the commissioner's duty to collect the employer privilege tax, together with penalty and interest, levied hereunder from any officer, stockholder, partner, member, principal or employee of an employer that is out of business or has dissolved, liquidated or otherwise terminated at a time when it has refused or failed to pay the privilege tax levied under this part; and any such officer, stockholder, partner, member, principal or employee who has received property belonging to the employer, but such collection shall be limited to the value of the property received.

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, is amended by deleting Part 17 and by substituting instead the following:

§ 67-4-1701. The tax levied by this part on the privilege of engaging in certain vocations, professions, businesses and occupations shall not be levied on or after June 2, 2001. However, the department of revenue shall collect all such taxes that were due and payable on or before June 1, 2001, and, for such purposes, the state shall continue

to possess and exercise all collection enforcement mechanisms set forth by the provisions of this part on June 1, 2001.

SECTION 3.

(a) Tennessee Code Annotated, Title 67, Chapter 6, Part 7, is repealed.

(b) Utilizing the various provisions of state law governing receipt and distribution of local option sales tax revenues in effect on January 1, 2001 and the various local option sales tax rates in effect on January 1, 2001, the state of Tennessee shall annually calculate and distribute to each county and municipality an amount substantially equivalent to the amount that would have been realized by such county or municipality had the Local Option Revenue Act remained in effect and the various local sales tax rates remained unchanged. As used in this subsection, "*the various provisions of state law governing receipt and distribution of local option tax revenue in effect on January 1, 2001*" shall include, but not be limited to, the provisions of § 6-51-115 and § 67-6-712 as such sections existed on January 1, 2001.

(c) Notwithstanding the provisions of subsection (b) to the contrary, Tennessee Code Annotated, Section 6-51-115(c), is amended by deleting subdivision (2).

SECTION 4. The commissioner of revenue is authorized to promulgate such rules and regulations as may be necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. Section 1 and Section 3 of this act shall take effect October 1, 2001;
Section 2 shall take effect June 2, 2001; and the remaining sections shall take effect on
becoming law, the public welfare requiring it.